

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>R.F., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-1121</b>
	)	<b>Issued: January 4, 2023</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Louisville, KY, Employer</b>	)	
_____	)	

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On July 26, 2022 appellant, through counsel, filed a timely appeal from a June 28, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a left shoulder condition causally related to the accepted August 7, 2020 employment incident.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>3</sup> The relevant facts are as follows.

On August 11, 2020 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 7, 2020 he injured his left shoulder when his left shoulder popped while he was delivering a package to a customer's porch while in the performance of duty. He did not stop work.

In an August 17, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a medical report dated August 13, 2020 by Dr. Robert L. Berlin, an occupational medicine specialist, who noted that appellant related complaints of pain in his left shoulder, which appellant attributed to reaching for a package in his vehicle while at work on August 5, 2020. Dr. Berlin performed a physical examination of the left shoulder and documented pain, a mildly positive Speed's test, and reduced flexion, abduction, and rotation. He diagnosed left shoulder strain, recommended physical therapy, and completed a duty status report (Form CA-17) outlining modified-duty restrictions of no lifting, pulling, or pushing greater than 10 pounds and limited use of the left arm.

In an attending physician's report (Form CA-20) dated August 13, 2020, Dr. Berlin diagnosed left shoulder strain without rotator cuff tear and checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment activity.

In an initial evaluation report dated August 17, 2020, Denise Whitman, a physical therapist, indicated that appellant related complaints of left shoulder pain, which he attributed to feeling a pop while reaching to grab a package on August 5, 2020. Physical therapy notes dated August 21 through 28, 2020 documented various therapeutic treatments.

In a follow-up report dated August 31, 2020, Dr. Berlin noted appellant's ongoing left shoulder complaints and examination findings. He recommended that appellant undergo a magnetic resonance imaging (MRI) scan of the left shoulder.

In a report dated September 1, 2020, Dr. Berlin augmented appellant's work restrictions to no lifting, pushing, or pulling more than five pounds with the left arm.

By decision dated September 21, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that he sustained an injury in the performance of duty, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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<sup>3</sup> Docket No. 22-0058 (issued April 22, 2022).

OWCP subsequently received additional evidence. A report of MRI scan of the left shoulder dated September 23, 2020 demonstrated mild supraspinatus tendinopathy with mild partial-thickness articular-sided fraying at the footplate, mild-to-moderate intra-articular long head biceps tendinopathy, mild subscapularis tendinopathy, prominent thickening of the glenohumeral joint capsule, and a partially visualized superior labrum anterior and posterior (SLAP) tear.

In a statement dated September 28, 2020, appellant indicated that on August 7, 2020 he felt a pop in his left shoulder while delivering a package on a porch, which caused him to drop the package. He indicated that he immediately felt a burning sensation in the front part of the left shoulder.

In a report dated September 25, 2020, Darin Coen, a physician assistant, noted that appellant continued to complain of pain and difficulty with reaching overhead and behind his back. He reviewed the left shoulder MRI scan and prescribed additional physical therapy and medication. Mr. Coen indicated that appellant may require an orthopedic consultation if his symptoms worsened.

A note dated October 2, 2020 by an unknown healthcare provider recommended that appellant remain off work pending an upcoming surgery on October 26, 2020.

On October 9, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In an operative report dated October 26, 2020, Dr. John Stuart Blankenship, an orthopedic surgeon, noted pre- and postoperative diagnoses of left shoulder adhesive capsulitis, SLAP tear, and rotator cuff tear. He indicated that he performed left shoulder manipulation, arthroscopic lysis of adhesions, rotator cuff debridement, and subpectoral biceps tenodesis.

Appellant underwent additional physical therapy to the left shoulder from October 27, 2020 through January 15, 2021.

By decision dated January 22, 2021, OWCP's hearing representative denied modification of the September 21, 2020 decision.

OWCP continued to receive evidence. In an October 2, 2020 report, Dr. Blankenship noted that appellant related complaints of left shoulder pain, which appellant attributed to an injury that he sustained while delivering a package. He performed an examination, reviewed the left shoulder MRI scan, and diagnosed left shoulder pain of unspecified chronicity and a SLAP tear, rotator cuff tear, and adhesive capsulitis of the left shoulder.

On July 14, 2021 appellant, through counsel, requested reconsideration. In support thereof, counsel submitted a June 20, 2021 statement from appellant, in which he explained that on August 7, 2020 appellant reached behind his seat to retrieve a package before delivering it to a customer's porch and, while doing so, appellant felt a burning sensation as if he had overstretched the muscle in his shoulder. Appellant related that he then walked up to the front porch and dropped the package off, at which point he felt a pop in his left shoulder and sharp pain.

By decision dated September 20, 2021, OWCP modified its prior decision to find that appellant had established the factual component of his claim. However, the claim remained denied

as the medical evidence of record was insufficient to establish a causal relationship between his diagnosed left shoulder conditions and the accepted August 7, 2020 employment incident.

On October 19, 2021 appellant appealed OWCP's September 20, 2021 decision to the Board. By decision dated April 22, 2022,<sup>4</sup> the Board affirmed the September 20, 2021 decision.

On June 23, 2022 appellant, through counsel, requested reconsideration. In support of his request, he submitted a June 17, 2022 narrative letter by Dr. Blankenship, who noted a history that appellant "twisted to [appellant] left to grab a package at work and felt a pop in his shoulder." Dr. Blankenship outlined appellant's diagnostic testing results, treatment, and surgical findings and diagnosed a left-sided SLAP tear. He opined that "the pop [appellant] felt at the time of lifting the package during his initial work injury was resulting in his later diagnosis of SLAP tear." Dr. Blankenship explained that "the injury precipitated inflammation and stiffness in his shoulder," which had to be treated surgically.

By decision dated June 28, 2022, OWCP denied modification of its September 20, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA,<sup>5</sup> that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.<sup>8</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted August 7, 2020 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of the September 20, 2021 decision because the Board considered that evidence in its April 22, 2022 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>11</sup>

In support of his June 23, 2022 request for reconsideration, appellant submitted a narrative letter dated June 17, 2022, from Dr. Blankenship who provided a history that appellant “twisted to his left to grab a package at work and felt a pop in his shoulder.” Dr. Blankenship diagnosed a SLAP tear and opined that the August 7, 2020 employment incident caused the diagnosed condition. He explained that the pop that appellant felt was consistent with a SLAP tear, and that the injury caused inflammation and stiffness, which led to surgery. The Board finds however, that Dr. Blankenship’s June 17, 2022 narrative letter is conclusory and fails to provide a rationalized medical opinion explaining how he arrived at his conclusions.<sup>12</sup> The Board has held that medical opinion evidence should reflect a correct history and offer a medically-sound explanation of how the specific employment incident, physiologically caused injury.<sup>13</sup> This report is, therefore, insufficient to establish causal relationship.<sup>14</sup>

As appellant has not submitted rationalized medical evidence establishing a causal relationship between his diagnosed left shoulder conditions and the accepted August 7, 2020

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<sup>9</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>11</sup> *A.D.*, Docket No. 20-0553 (issued April 19, 2021); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

<sup>12</sup> *See D.A.*, Docket No. 20-0951 (issued November 6, 2020); *G.M.*, Docket No. 15-1288 (issued September 18, 2015).

<sup>13</sup> *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>14</sup> *See P.M.*, Docket No. 22-0050 (issued June 6, 2022).

employment incident, the Board finds that he has not met his burden of proof to establish his claim.<sup>15</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted August 7, 2020 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 28, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2023  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>15</sup> See *J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).